

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: BENICAR (OLMESARTAN)
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NUMBER:

15-2606

Mitchell H. Cohen United States Courthouse
One John F. Gerry Plaza
Camden, New Jersey 08101
August 1, 2017

B E F O R E: **THE HONORABLE ROBERT B. KUGLER**
 UNITED STATES DISTRICT JUDGE
 THE HONORABLE JOEL SCHNEIDER
 UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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12 Certified as true and correct as required by Title 28,
13 U.S.C., Section 753.

14 /S/ Carl J. Nami
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1 (Open court)

2 THE DEPUTY COURT CLERK: All rise.

3 THE COURT: Thanks. Have a seat, everybody. Good
4 morning. All right. Carl, do you need anybody's appearance
5 or do you think you know this cast of characters?

6 All right. Well, we're here on a status conference
7 today. I understand that the parties have some things they
8 want to put on the record and some applications to make.

9 So why don't we start with plaintiff's counsel. Mr.
10 Coffin, I believe you want to go first.

11 MR. COFFIN: Good morning, Your Honor, and thank you,
12 Your Honor. Chris Coffin, on behalf of the plaintiffs in this
13 case.

14 Yes, Your Honors, we are pleased to announce that after
15 just over two years of litigation in this MDL, the parties
16 have reached a settlement in this case. The settlement
17 provides for the defendants to fund a settlement program of
18 300 million dollars. Today we'd like to go through this
19 settlement program with Your Honors. We have a bit of an
20 agenda with some individuals to speak about claim

21 administration. Mr. Marvin from the defense side and Mr.
22 Rafferty from the Plaintiffs' side are going to give some more
23 details about the settlement. We have entered into a master
24 settlement agreement this morning the defendants have signed,
25 the plaintiffs have signed. So, the settlement was entered

00:02 1 into officially this morning. The settlement to give you a
2 broad overview will include all cases filed in both State and
3 Federal Court. All cases that meet a specific criteria. I
4 think Mr. Marvin, perhaps Mr. Rafferty will address that a
5 little bit more specifically with the court. Also just to
6 give you a little preview of today, what we'd like to do after
7 Mr. Marvin and Mr. Rafferty present, we do have a
8 representative from the Claims Administration Company of Brown
9 and Greer who will be administering the settlement. Also from
00:02 10 Provideo Lien Resolution. We have a representative from
11 Provideo here to address the court. Miss Sharko is going to
12 go through the Orders that attach to the Master Settlement
13 Agreement the parties have entered into, and then I will
14 address the Common Benefit motion and memorandum that's been
00:03 15 submitted to the court.

16 Before Mr. Marvin and Mr. Rafferty give an overview, I
17 just would like to say that on the plaintiffs' side my co-lead
18 counsel and I are very pleased with the work that the
19 plaintiffs have done. The Plaintiffs' Steering Committee has
00:03 20 put in a lot of tremendous work in this case and we're very
21 pleased with the resolution. My co-lead counsel Mr. Slater
22 would like to address the court before Mr. Marvin and Mr.
23 Rafferty do, Your Honors.

24 THE COURT: Please. Mr. Slater.

00:03 25 MR. SLATER: Thank you, Judge. I probably have

00:03 1 spoken quite enough in this litigation, so I'm going to be
2 pretty quick and leave it to the people who really understand
3 all these complex documents to speak, but I think that it's
4 important on behalf of all the plaintiffs, and I won't presume
5 to speak on behalf of the defense, that we really want to
6 thank the court, Judge Kugler, Judge Schneider. We wouldn't
7 be here today, we wouldn't be here today at this stage of
8 litigation for this purpose without you.

00:04 9 You know, I can just state that it is a fairly large
10 number of cases and have not been the one that's been managed
11 this practically and with a transparency of what the court
12 wanted and explained to the lawyers and in getting us here I
13 think that it was, it was really a terrific job by the court
14 and really speaks really well for, for MDL's being here in New
00:04 15 Jersey with this court. And, you know, we're really proud to
16 have appeared in this court and been able to do the hard work
17 we did. And you know I also would like to echo what Mr.

18 Coffin said, this is a team effort and you can see a lot of
19 the lawyers from around the United States here who did
00:04 20 incredible work and invested a lot of money and time and
21 obviously every single person here made this possible and
22 there's no one person that did this. It's every single person
23 that did this. So I would just like to, for the record, to
24 thank everybody on the plaintiffs' side for what they did.

00:05 25 And I also would like to thank the defense. Very

1 professional. Miss Sharko is as tough an adversary as you'll
2 find anywhere in the country and I have no problem saying
3 that. I will never see the word road map the same again and
4 I'll never think of Hawaii the same as I did before Judge
5 Schneider's ruling. And Mr. Marvin was a pleasure to deal
6 with and as professional as anyone you'll find and Mr. Field
7 as good a lawyer as you could find anywhere and we were lucky
8 to have this type of a defense team to work with and against
9 in this litigation because it allowed us to actually focus on
10 what we needed to do, and when we fought hard and again I
11 think we're all very proud to have had this opportunity to be
12 in the ring with them with Your Honors running this
13 litigation. And finally I just want to say for the most
14 important people from our perspective in this entire
15 litigation is the plaintiffs and the people who are going to
16 be able to proclaim through here, we're really gratified for
17 them because, you know, that's our job. That's what we're
18 here for. And we feel that the court gave us the opportunity
19 to represent them the way we needed to, but ultimately this
20 day is not for any of us from my perspective as lawyers is for
21 our clients. So hopefully this will give them some relief and
22 give them the justice that our system allows which this is it.
23 So, we just want to thank you for all the hard work and
24 for the guidance that you gave us getting here today. Thank
25 you.

1 MR. COFFIN: I agree. Very well said, Mr. Slater.
2 I'll echo what Mr. Slater said. It really has been a joy to
3 practice in front of Your Honors and having been involved in
4 many MDL cases, I'm sure the defense can speak to this too. I
5 know Miss Sharko was been involved in many as well as Mr.
6 Marvin. It was run very efficiently. We appreciate that and
7 our clients. As Mr. Slater said, those who are most important
8 in this case. Our clients certainly appreciate that.

9 Next on the agenda, we have Mr. Doug Marvin was the
10 lead negotiator on the defense side. Mr. Troy Rafferty was
11 the lead negotiator on the plaintiffs' side. As Your Honors
12 are aware, we had a plaintiffs' negotiating committee which
13 consisted of myself, Mr. Slater, Miss Tara Sutton and Mr.
14 Rafferty. Unfortunately Miss Sutton sends her regards. She
15 couldn't be here today because she's in a Daubert Hearing in
16 Pensacola, Florida in another MDL, but Mr. Rafferty was our,
17 the lead of our plaintiffs' negotiating committee. He and Mr.
18 Marvin engaged in hundreds and hundreds of hours of
19 negotiation and discussion about this resolution. So, I'd
20 like Mr. Marvin and Mr. Rafferty to present to you the nuts
21 and bolts.

22 MR. MARVIN: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. MARVIN: Douglas Marvin for the defendants. I'd
25 like to echo the comments made by my colleagues on the right

1 side of the podium here. It has been discussions that have
2 transpired over the past several months. All those
3 discussions have been handled politely with candor and
4 professionalism and it has been a very rewarding exercise.
5 And we also like to thank the court for your guidance
6 throughout the process as well.

7 In putting together this settlement, we have strived to
8 establish a program that has three hallmarks.

9 First is transparency.

10 The second is equality and the third is fairness.

11 In terms of transparency, we have put together a Master
12 Settlement Agreement that is open for everyone to read. It
13 will be placed on the web. And every aspect and every term of
14 this settlement is open and transparent for everyone to read.

15 Second, in terms of equality. Claimants who are
16 similarly situated, all are being treated equally. There is a
17 matrix that is set up and those who fall within various levels
18 of the matrix based upon the evidence that they produce during
19 the claims process will basically be treated the same.

20 And, third, with respect to fairness. Every claim will
21 be reviewed individually, and every claim, claimant will have
22 due process protections built into the program where they can
23 ask for reconsideration to the Claims Administrator where they
24 can appeal to a committee of lawyers from both sides. And,
25 indeed even take their matter to a special master within the

1 contours of the settlement program.

2 So, each of those hallmarks I think have been achieved
3 here. If Troy and I can just sort of give a brief overview.
4 In establishing the program it is a program that is open to
5 eligible claimants with eligible claims. And so there's two
6 key terms there, eligible claimants, eligible claims.

7 For eligible claimants, all plaintiffs who have cases
8 on file whether in this court or in the New Jersey State Court
9 that are on file for pending cases as of August 1st are
10 eligible for this settlement if they allege an injury
11 resulting from the use of Olmesartan and if the first use of
12 Olmesartan was prior to May 1, 2015. It's also open to those
13 who have not yet filed a case and that may be because they
14 retained counsel. Counsel has not run up against the statute
15 of limitations yet, and, so, it did not need to file a case
16 but they got it sitting in their office. We did not want to
17 exclude them. And so claimants who have not filed a case but
18 who allege an injury just as in for those complaining cases
19 for the result of a use of Olmesartan who allege first use of
20 Olmesartan prior to May 1, 2015 and who signed an agreement to
21 retain counsel on or prior to August 23. We have that period
22 built in so that counsel can contact those who you have
23 contacted them who have retained them. If they need time to
24 sign a retainer agreement, we realize it's August with
25 vacations and all. And so we've given that period of time to

1 allow those people to enroll in the settlement as well.

2 You want to go through the injury levels?

3 MR. RAFFERTY: No. Go ahead.

4 MR. MARVIN: Sure. Okay. And the second key term
5 here are the eligible claims.

6 MR. RAFFERTY: Troy Rafferty on behalf of the
7 plaintiffs' negotiating committee. I think as Doug said, one
8 of the most important things was for us to be inclusive and
9 fair in establishing this resolution program. As you go
10 through, you'll see that there are going to be six different
11 eligible categories of injuries throughout this. The injury
12 level one being a diagnosis or pathology report of Sprue-like
13 Enteropathy or Villous Atrophy. And then also a corresponding
14 weight loss of five percent of your body weight or
15 hospitalization of three days or more. And then there are
16 some other parameters built into the resolution program about
17 other etiologies or other causes that the claimant will have
18 to meet in order to be eligible for injury level one.

19 Injury level 2 involves a positive E Challenge, meaning
20 that they start that the claimant had symptoms while on
21 Olmesartan and it persists for greater than seven days, and
22 then improved following this continuation. So that being a
23 positive De-Challenge. They stopped taking the drug and their
24 symptoms improve. Also in the injury Level II there is that
25 same weight loss of five percent of the body weight or

1 hospitalization for three days or more and other requirements
2 in regards to the other etiologies.

00:14 3 Injury Level III are those claimants that qualify
4 either in injury Level I or II but without the corresponding
5 weight loss or hospitalization. So they would meet all the
6 other requirements of either of those two categories but not
7 threshold or the weight loss or the injury -- or I mean the
8 hospitalization.

00:14 9 Four is an aggravation of a pre-existing intestinal
10 condition. So recognizing the people may have pre-existing
11 intestinal conditions prior to taking Olmesartan if in fact
12 those pre-existing -- if those pre-existing symptoms worsen
13 while on Olmesartan and continue for more than seven days and
14 improve upon discontinuation of Olmesartan, then they would
00:15 15 qualify in each of Category IV. And there are also no other
16 -- there are other etiology requirements in that as well.

17 Injury Level V is symptoms while on Olmesartan and
18 persist for five days or more, and there are no other
19 etiologies.

00:15 20 And finally Injury Level VI which is symptoms while on
21 Olmesartan for at least 30 days. The, really the, one of the
22 things that we really try to do with these six categories. I
23 think one of the hallmarks that Mr. Marvin was talking about
24 was inclusion, making sure that we bring in all of the
00:15 25 eligible claims that we possibly could. So I think these

1 eligibility levels will help do that.

2 (Brief pause)

3 MR. MARVIN: Appendix J of the Master Settlement
4 Agreement that sets out the criteria for the valuation of the
00:16 5 claims, that's the matrix, and each injury level whether it's
6 one, two, three, four, five or six has been assigned a certain
7 number of base points. And then there can be adjustments to
8 those base points based upon the individual characteristics of
9 the claimant. So if there's both the diagnosis of an SLE and
00:16 10 the pathology report, there's an adjustment upward. For
11 hospitalization, obviously some may go into the hospital for a
12 night, others could be there for a longer period of time. And
13 so we take that into account in having a gradation with
14 respect to hospitalization. Obviously those who are in the
00:17 15 hospital longer, to be considered more serious cases, and,
16 therefore, entitled to greater compensation. The same is true
17 with weight loss. There's six levels of adjustments there.

18 Renal failure. If there are cases involving renal
19 failure, then there is an adjustment for that case. And the
00:17 20 same is true for long-term steriodal use and then the usage
21 period as well.

22 So, to enroll in the settlement, a claimant will need
23 to submit an Opt In Form. Those Opt In Forms can be filed
24 Online. Once the participation thresholds, and then there are
00:17 25 sub-thresholds that are met, then the settlement becomes

1 effective. The Overall Threshold for example is 95 percent of
2 the claims. Once 95 percent of the Overall Threshold is met,
3 that concludes the sum of filed cases and unfilled claims. And
4 if sub-thresholds are met as well, the settlement is effected.

00:18 5 Then to receive the settlement award, a plaintiff or
6 claimant will also need to submit a claim package and that's
7 to support the injury alleged use of Olmesartan. And then the
8 allocations will be made among the plaintiffs and claimants in
9 accordance with the evaluation of their claims.

00:18 10 MR. RAFFERTY: Excuse me.

11 THE COURT: Sure.

12 MR. RAFFERTY: Yes, Your Honor. I want to make sure
13 we state everything correctly.

14 THE COURT: Sure.

00:18 15 (Counsel conferring)

16 MR. RAFFERTY: I'm sorry, Your Honor. Go ahead.

17 MR. MARVIN: Your Honor, this sort of maps out the
18 steps to be taken in accordance with the settlement program.

00:19 19 First, in the announcement of the settlement, that's
20 today. There's a period of time then for plaintiffs to Opt-In
21 to the settlement. The claim administrator will review the
22 Opt-In packages. The claims administrator will then calculate
23 the participation rate. And then once the thresholds are met
24 as noted before, the obligation to fund the settlement is
00:19 25 triggered. Actually before that occurs, plaintiffs can begin

1 submitting claims packages. The Claims Administrator will
2 review those claims packages for completeness, eligibility and
3 preliminary point awards. And if the claims package is
4 complete and the claim eligible, the Claims Administrator will
5 send an award setting out the points in accordance with the
6 matrix and the procedures.

7 As I mentioned before, the due process protections are
8 built into this so that once the claimant is notified of the
9 point award, then they have the right to have that
10 re-evaluated, a number of steps. And often these claim
11 packages are touched by the Claims Administrator or the
12 Eligibility Committee five, six times. At the end of that
13 process, the points for all the claims are totalled. The
14 point value calculated, liens are resolved and paid and
15 payments then made to the claimant.

16 MR. RAFFERTY: Okay. Yes, I think these are some of
17 the keep dates that once everything is implemented after today
18 will be going forward, the ones that people are going to want
19 to know August 23rd for a claimant that has not yet been filed
20 or a retainer agreement must be in place. But August 23rd is
21 the date, basically the date by which you have gotten a
22 retainer agreement signed by the client or the case has been
23 on file. After that the claims will not be eligible for a
24 resolution program. August 25th cases and claims must be
25 registered with the requirements set out in the census order

1 that was provided to Your Honor. September 15th the deadline
2 for submitting the Opt-In Forms for people to actually be
3 Opting into the settlement at that point as compared to
4 August 25th which is the Census Order. It's not actually the
5 Opt-In date for the settlement to be clear. And then 30 days
6 filing the date, the settlement becomes the 30th filing, the
7 date the settlement becomes effective, the deadline for
8 submitting claims packages begins.

9 MR. MARVIN: So that completes then the overview of
10 the program. And once again, we appreciate the time and
11 opportunity that both of you as Judges have given us to put
12 together this program. Thank you.

13 MR. RAFFERTY: Just, and, Doug, I just want to make
14 clear. I think I might have misspoke when we were looking at
15 injury Category VI. In terms of the symptoms. The symptoms
16 need to persist for 30 days, the 30 days up there. I just
17 want to be -- make sure it was clear to the people who may be
18 reading the transcript at some point in case I misspoke.

19 MR. MARVIN: That's true. The requirement is 30 days
20 that you have to be on Olmesartan for 30 days in order to be
21 eligible for the settlement.

22 MR. COFFIN: Okay. Thank you, Mr. Marvin and Mr.
23 Rafferty.

24 Your Honor, is there anything you want to address now
25 before we move on to claims administration.

1 THE COURT: Nope.

2 MR. COFFIN: Okay. Next, Your Honor, Mr. Orran Brown
3 is here from the firm of Brown Greer. Brown Greer has been
4 chosen by the parties to administer the settlement and Mr.
5 Brown can go through his company's experience and give us a
6 little background about claims administration.

7 MR. BROWN: Thank you. Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. BROWN: I'm Orran Brown, Brown Greer from
10 Richmond, Virginia. I'm joined here today by Bill Strunk
11 who's one of our partners and he and I will be the leaders in
12 operating or helping to implement this settlement. We are
13 delighted to be here. We are delighted to be involved in this
14 program. We have worked on many settlement programs with
15 these counsel in other matters and this process that you've
16 heard described as one that we're very familiar with in terms
17 of the stages that along which this program will proceed. We
18 specialize in designing the systems and training the people
19 and having the reviewers and the experts in making sure that
20 this is implemented correctly. We build all the systems for
21 this ourselves with our own people. We do not outsource
22 anything, but we design this to be secure, to be easy to use
23 in going through the steps in this process and to move the
24 claims along correctly and fairly and quickly. And we have
25 done this in many programs beginning with Dalkon Shield back

1 in 1989. We have worked on the Fen-Phen Dye Drug Settlement.
2 We have worked on NuvaRing, Pradaxa, Vioxx, the DePuy ASR Hip
3 Replacement Program. These are just examples of some of the
4 ones that we've done that involve drugs, medical devices and
5 personal injuries. We have worked on the BP Oil Spill Claims
6 Program and the Chinese Dry Wall litigation. So we have a lot
7 of experience in these type of settlement programs and how to
8 take the settlement document make sure that we set up a
9 process to implement this correctly. We work with, closely
10 with the parties, the representatives of the plaintiffs and
11 the defendants and with the court and Special Master to make
12 sure we do this correctly. We are an independent mutual. We
13 have no bias, we are not influenced by any one side or the
14 other. We do this straight down the middle to make sure it's
15 done and we have uniform fair outcomes for all the claimants
16 who participate in it. And this program the stages that you
17 heard described of the initial registration census, the
18 enrollment or opt-in phase and the claims review and payment
19 phase, including the extraordinary injury fund that's part of
20 this program. These are pieces or stages that we have seen in
21 many programs and implemented successfully in many programs
22 and we will do that here. We are ready to go today if the
23 court were to approve the Order. We have already built and
24 designed the settlement website. It's a public facing website
25 that then lawyers who represent these product users will go to

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1 that website and then we have the function there to register,
2 register claimants or their clients for filed and unfiled
3 cases. And it's just a step by step click here, go on line
4 and then they establish the secure portal with us and exchange
5 with us on line so that all of the information that they give
6 us and all of the notices that we give them on outcomes, it's
7 all exchanged in that secure internet connection. We try to
8 use the technology as much as we can in a program like this
9 where everyone will be represented and will stay represented
10 by lawyers unless somebody were to discharge a lawyer later
11 and become Pro Se. They'll work with us on line to make all
12 of this work correctly. And we've worked with these firms
13 before and they're very familiar with these processes and
14 we're confident that they'll work smoothly here. We share
15 that information in that secure on line system. All of the
16 steps that you heard described will all be submitted to us in
17 that process, the documents the medical records. We review
18 them on line ourselves. We issue the results to the parties
19 and we provide constant reporting on what's going on. It's a
20 fully open book about what we have, where we stand. Any law
21 firm can look up his or her clients at anytime to see exactly
22 where they are in the process. Each law firm is assigned a
23 law firm contact in our firm that is their go-to person
24 whenever they have a question or need or anything we can help
25 them with, they go straight to us. This is not a bureaucracy.

1 We're not here to trip up people. We are here to make these
2 claims, to make the system easy to submit these claims and
3 review them correctly and help people get through the process.
4 And the court, whatever reports the court wants from us, we
5 will furnish on whatever schedule. We post reports daily on
6 progress that the parties, the lead for the plaintiffs and the
7 defendants can go on line and look at them at anytime. They
8 can ask us for any special reports they need, and the court,
9 if the court would like can have its own portal access with us
10 to look up reports whenever you would like. And, of course,
11 if you have any particular need, all you have to do is contact
12 us. We've worked with the Special Master in other programs.
13 The Special Master also shares information with us on line
14 back and forth. So it's a cohesive system that uses
15 technology to the best advantage to move these claims quickly
16 through the process and get them finished. And we are really
17 honored to be working on this and delighted to be here today.
18 And if the court has any questions of us, I'm happy to answer
19 them about what we foresee happening. But this is a good
20 settlement. It has the right pieces in it we think, and we
21 will build on our experience in similar programs to make sure
22 this one is done correctly.

23 I do have, Your Honor, a short handout that's just
24 background on our firm. If the Court would like to have it.
25 It's just a little bit of our experience because we have not

1 worked with you directly before, and we want you to feel
2 comfortable that this settlement is in good hands for the
3 Claims Administration.

00:30 4 THE COURT: May I ask a question first? The website,
5 it's going up as soon as I sign these Orders sometime today?

6 MR. BROWN: Yes, Your Honor.

7 THE COURT: Now if somebody, somebody out in Oregon
8 who does not have a lawyer and hasn't filed a claim sees about
9 the settlement and says, hey, you know what? Maybe, maybe
00:30 10 that's why I have this intestinal problem. Can they -- are
11 they going to be able to go on the website and find out what
12 they should do next?

13 MR. BROWN: Anyone can go on the website, your Honor,
14 and find it, what they can do next. Now in this program an
00:30 15 unrepresented product user has to have a lawyer by August 23rd
16 before they can participate.

17 THE COURT: Will the website tell them that?

18 MR. BROWN: Yes, the website will explain all of
19 that.

00:30 20 THE COURT: Okay.

21 MR. BROWN: They'll have the settlement document, the
22 settlement agreement, all the forms will be there. They can
23 view it all and it will have our contact information. If
24 somebody has a question, they can call us and we will help
00:31 25 them. So if anybody has any, any need or question about how

1 it works or whether they can or can't begin it, all they have
2 to do is contact us.

3 THE COURT: Okay.

4 MR. BROWN: But we're ready to launch that website as
5 soon as the court gives us the green light and it will be up
6 and running today and people can start registering their
7 clients today, either individually, because the form will be
8 on line and they can click and fill or there's a bulk excel
9 function, as the firm has more than one or how ever many it is
10 clients. They give us the required information in the excel
11 and we will dump it into the system so it's all there. And
12 that information then is used throughout the process. They
13 only have to enter that part once to us. From then on,
14 everything builds on top of it. We pre-fill the claim forms
15 so they already have the claimant's name. Any of the
16 information we already have is already there. They can
17 correct it. They add on line whatever else they need to. But
18 all of that information will be available starting today and
19 then build on itself throughout.

20 THE COURT: Well, I think that I'd be interested in
21 accessing it and getting status reports so if the, if the
22 court would access it, I could get the information, for
23 instance, as of that time how many claims have been filed and
24 the status of the claims, where they are in the process.

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: General data like that. I don't care
2 about individual claims. I just want to know how it's moving
3 up through the process. We can set that up.

4 MR. BROWN: Yes.

5 THE COURT: Okay. Good.

6 MR. BROWN: We'll have that as soon as we start
7 getting information, we'll start posting reports on how many
8 people have registered and who those law firms are.

9 THE COURT: Okay. Good.

10 MR. BROWN: Now any one law firm can only see its own
11 people.

12 THE COURT: Right.

13 MR. BROWN: It's secure by user from everybody else.

14 The Court, the Special Master, the leadership counsel for the
15 defendants and the PNC can see overall statistics, and I think
16 the Settlement Agreement allows them to see details on the
17 claim packages and the leadership role. But any individual
18 lawyer can only see his or her own people and nobody else's.

19 The Court can have access to whatever reports it wants. We'll

20 make standard reports that show what we have and where it
21 stands starting with registration, who's enrolled, who has
22 claims. Who has extraordinary injury claims. There will be
23 reports there that you can see 24/7 if you'd like to log on,
24 look at them. And you or your law clerks can use that anytime
25 you'd like to.

1 THE COURT: That's good. I'll be in touch with you
2 about setting that up.

3 MR. BROWN: Thank you. We will set that up. May I
4 hand this up?

00:33 5 THE COURT: Yes, please. Judge Schneider, did you
6 have any questions at this time?

7 MAGISTRARE JUDGE SCHNEIDER: No. Thank you.

8 MR. COFFIN: Thank you.

9 THE COURT: Thanks.

00:33 10 MR. BROWN: Thank you, Your Honor.

11 THE COURT: Thanks.

12 MR. COFFIN: Thank you for your time and let us know
13 if you need anything at all.

14 THE COURT: I will. Thank you.

00:34 15 MR. COFFIN: I may have missed it. I don't know
16 whether Mr. Brown actually stated the website address.

17 THE COURT: No. I was waiting for that. Is it in
18 the Order?

19 MR. COFFIN: It is, yes.

00:34 20 THE COURT: Okay.

21 MR. COFFIN: It's in the NSA. But for the record,
22 www.Olmesartanproductlitigationsettlement.com. And as Mr.
23 Brown indicated, once Your Honor signs the Orders today, it
24 will be live for people to access.

00:34 25 THE COURT: Great.

00:34 1 MR. COFFIN: Next, Your Honor, Mr. Bob Marcino from
2 Provideo Lien Resolution Company has engaged in lien
3 resolution programs and multiple mass tort litigation
4 settlements throughout the country. Bob's here to address the
5 court briefly.

6 THE COURT: Mr. Marcino, could you spell your last
7 name for us?

8 MR. MARCINO: M-a-r-c-i-n-o, Your Honor.

9 THE COURT: Thank you.

00:35 10 MR. MARCINO: Good morning, Your Honor. Thank you,
11 Chris. Bob Marcino from Provideo. I'm also joined by Scott
12 Denardo also from our firm.

00:35 13 Provideo is a lien resolution and QSF administration
14 firm. Over the past six years we've handled many matters with
15 thousands of claimants like we have here in this litigation.
16 Cases like Avandia, Yaz. Y-a-z. We are appointed to be the
17 exclusive LAR Prodaxa. The Stryker Hip Litigation, Right Hip
18 Litigation. Current matters like CA DuPont, LaGrand Duplow.
19 We're very familiar with the lien resolution terms set out in
00:35 20 the MSA, and we'll be coordinating with Brown Greer with whom
21 we've also worked on several cases. And the when the time,
22 when the appropriate time is reached for us to begin the
23 processes, we will do that through coordination with the
24 parties.

00:36 25 THE COURT: I'm just curious. What do you do to get

1 access to the lien information from Medicare and Medicaid? Is
2 that accessible on line?

3 MR. MARCINO: Well, there's -- Medicare makes
4 available a portal to claimants where they can go in and see.
00:36 5 However, in cases like this, the Medicare lien obligations are
6 resolved through a model, and by that I mean instead of going
7 one by one through each claimant with Medicare which is not
8 equipped to do, we set up a model under which the liens are
9 resolved. And so that begins with what's called varication of
00:36 10 entitlement where we deliver the inventory list to Medicare,
11 and they bring back to us a match list and then from that, we
12 apply the model that will develop along with Medicare to
13 resolve the Medicare liens. With Medicaid it's really going
14 out to all 50 States and their representatives. We have
00:37 15 processes in place for that. Some are fast, some are very
16 slow but we're used to it, and in most of the cases Medicaid
17 States have automatic reductions of liens and offsets or, you
18 know, holdbacks are the worse case scenario.

19 THE COURT: How about the private insurers? Do you
00:37 20 ever run into liens from the private insurers? Any States
21 that apply for that?

22 MR. MARCINO: Oh, of course. You know, most of the
23 private liens will be handled through a series of private lien
24 resolution programs that will assemble with subrogation firms
00:37 25 who represent a lot of plan carriers. There will be specific

1 terms with similar reductions, similar caps or worse case
2 scenarios. Those processes also kick off around the same time
3 that will start with the Government programs and then there's
4 always sort of a smaller subset that have lien holders with
5 carriers that don't participate in these programs where we
6 have to go one by one, and those are the ones that, you know,
7 while we're keying all this up, while Brown Greer is doing its
8 work, some of these liens won't be able to be finalized until
9 we actually know award values because some lien holders don't
10 want to get engaged in that discussion until they know what
11 the person's getting.

12 THE COURT: Right. Who actually pays off the lien?

13 MR. MARCINO: We do, Your Honor.

14 THE COURT: Okay.

15 MR. MARCINO: And a little clarification from -- with
16 Mr. Marvin and Mr. Rafferty went through earlier. The lien
17 holders get paid after the claimants get paid. Usually within
18 30 to 60 days. Medicare doesn't like to be paid really until
19 the very end because we don't have anything in place to make
20 refunds or anything like that. So, we go through a
21 reconciliation process with Medicare. Those funds remain in
22 the Qualified Settlement Fund to be finalized.

23 THE COURT: All right. Thank you.

24 MR. MARCINO: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. COFFIN: Your Honors, the next, Miss Sharko is
2 going to walk through the multiple Orders that you're aware of
3 that attach to the MSA.

00:39 4 MS. SHARKO: Thank you. And thank you to the Court
5 for all of the courtesies and professionalism in moving this
6 case along to a swift and fair conclusion and to the
7 Plaintiffs who have been worthy adversaries. I will never
8 look at the word static again. I actually considered bringing
9 a can of static guard to court today, but it might be a little
00:39 10 too much.

11 We have five Orders we've presented to the court. The
12 first is the Census Order. That's a very important Order
13 because it will allow the parties and the administrators to
14 have the number of cases which will then establish the
00:39 15 threshold for the settlement.

16 Second, is the Special Master Order appointing Retired
17 Judge Marina Corodemus.

18 Third, is the Case Management Order which will give
19 notice to people who are considering opting out, what it is
00:39 20 they will have to go through if they choose to opt out and
21 pursue their cases.

22 Fourth is the Stay Order staying everything so the
23 parties can focus on getting into the settlement and getting
24 it running.

00:40 25 And fifth is the Implementation Order which has all the

1 deadlines and processes and the address of the Settlement
2 Administrator.

3 We ask that the Court in its discretion enter those
4 five Orders today. Parallel Orders have been submitted to
5 Judge Johnson. We expect that he will enter them later today.

6 THE COURT: The first one you want is the census. I
7 think, if we looked at the numbers, I think this would be
8 Management Order Number 30 I believe? And we left off at 29.
9 So this would be Number 30.

10 MS. SHARKO: That sounds right, yes. Right.

11 THE COURT: So I'll fill in Number 30, Case
12 Management Order Number 30 regarding census of claims. I've
13 reviewed that. It's acceptable and I'm signing that right
14 now. We will have that filed.

15 MS. SHARKO: Thank you.

16 THE COURT: The second one you wanted is the
17 appointment of a Special Master. I'm familiar with Judge
18 Corodemus and her work and I'm happy she's on board because I
19 have great confidence that she will get this resolved. We'll
20 call that Number 31 then. And I've reviewed it and I do
21 believe it complies with the requirements of Rule 53. So I
22 will sign that, enter that. And Judge Corodemus needs to file
23 with us the affidavits of no conflict under the Statute, and
24 she will do that shortly I understand?

25 MS. SHARKO: Yes. I understand that Mr. Slater has

1 them ready to go.

2 MR. SLATER: Yes, Judge. I'll have it filed this
3 afternoon.

4 THE COURT: Okay. The next one you want is the Case
5 Management Order regarding the Settlement Agreement and
6 deadlines. Is that the one?

7 MS. SHARKO: Yes.

8 THE COURT: That will be then 32. I've reviewed this
9 and this is acceptable and I will sign that now, and we'll
10 file that immediately.

11 MS. SHARKO: Thank you.

12 THE COURT: And the Stay, the Order for Limited Stay
13 is the caption on this and I'll sign that also. File that
14 today.

15 MS. SHARKO: Thank you.

16 THE COURT: And then is the Implementation Order and
17 that's what we've been calling that the Lone Pine Order.
18 Correct?

19 MS. SHARKO: No. The Lone Pine Order would be 32.

20 THE COURT: That was number 32.

21 MS. SHARKO: Lone Pine Order. It is called the
22 Olmesartan Settlement Agreement and deadlines.

23 THE COURT: Oh, I see it. Okay. I need to get
24 another copy of that but that would -- oh, I -- we have
25 reviewed that and that's acceptable. I will sign that. I

1 just have to printout a new copy of that one. Okay.

2 MS. SHARKO: Okay. Thank you.

3 THE COURT: Thank you. All right, there's one more
4 application, right?

00:43 5 MR. COFFIN: Yes, Your Honor. Last Friday the
6 plaintiffs filed a motion and memorandum asking the court to
7 set a Common Benefit Fee and Cost Assessment. If I could
8 address that briefly, Your Honor?

9 THE COURT: Yes.

00:44 10 MR. COFFIN: As you'll recall, back towards the
11 beginning of this litigation, an Order on May 25th, 2015 CMO
12 Number 3, the court created a Common Benefit Litigation Fund
13 for the purpose of setting forth the common benefit expense
14 procedures and the common benefit time keeping procedures
00:44 15 which the plaintiffs have implemented throughout this entire
16 case. We have kept track of all of the expenses on the
17 plaintiffs' side. We have kept track of all the time that has
18 been submitted.

00:44 19 The motion before the court is a request that the court
20 enter an Order assessing the fee, an assessment amount of
21 eight percent. Six percent of that will be common benefit
22 fees to compensate the common benefit lawyers who have
23 participated in this case. Two percent of that assessment
24 will go towards covering the common benefit expenses. As Your
00:45 25 Honor well knows, the case law is very clear in the MDL

1 context that common benefits in assessments are appropriate.
2 The request for six and two percent, as you will see from the
3 cases that we've cited is well within what's reasonable in a
4 complex pharmaceutical case such as this.

00:45 5 To give you a very brief thumb nail sketch, there have
6 been over 56,000 hours submitted for common benefit time to
7 date. There is about 3.4 million dollars in expense
8 currently. Obviously we have a massive undertaking with the
9 whole claims administration process. So there are additional
00:46 10 expenses that will continue.

11 To be clear, any expenses that are not used throughout
12 the claims administration process and to finalizing all of the
13 claims in the settlement will be distributed back to the
14 plaintiffs, to the client, to the claimants on a pro rata
00:46 15 basis. There have been approximately a hundred depositions
16 covered totally in the case. There were dozens of corporate
17 depositions, some of which took place in Hawaii. Thank you,
18 Judge Schneider.

19 MAGISTRATE JUDGE SCHNEIDER: No. Judge Kugler.

00:46 20 MR. COFFIN: Thank you, Judge Kugler. Although the
21 grass is always greener on the other side, I think I speak for
22 all of my colleagues on the defense and plaintiffs' side when
23 I say that initially we thought that was just great. But, you
24 know, you start planning and you have to deal with, these were
00:47 25 Japanese witnesses obviously and we were dealing with

1 interpreters, it was a massive, massive undertaking to
2 interpret the documents, to have interpreters there at the
3 depositions for both sides and to go through the process of
4 traveling, setting that up and actually taking the deposition.
5 That's included within the proximate 100 depositions that we
6 took but certainly was a new experience for me and it was
7 quite labor intensive for a number of lawyers. The countless
8 motions and arguments before the court, as you well know and
9 millions of documents that were reviewed and prepared to
10 support memorandums that were submitted to the court not the
11 least of which were oppositions to Daubert briefing and added
12 to our on the Plaintiffs' side our own offenses Daubert
13 briefing which were fully briefed and submitted to Your
14 Honors.

15 And last but not least as I mentioned earlier, we spent
16 hundreds and hundreds of hours in coming to a resolution of
17 this case and I think Mr. Slater did a fine job of stating
18 that the goal here is to ensure that the plaintiffs and the
19 claimants are adequately compensated, and we feel like from
20 the plaintiffs' perspective we have done a very fine job in
21 representing our clients and ensuring that people are
22 adequately compensated under this settlement.

23 So with that, Your Honor, we would ask that you enter
24 our -- an order assessing an eight percent common benefit
25 assessment, six percent fee and two percent costs.

00:48 1 THE COURT: I still have some questions about this
2 and I'm not suggesting for a moment that I have any objections
3 to it, but I think we need to give people an opportunity to
4 respond to this motion and I'm going to propose that we have a
5 return date on your motion in two weeks, August the fifteenth
6 and we'll make it clear that by Order of Docket Entry that
7 anyone who objects to it has to respond in writing I think by
8 August eleventh, and then I'll have a hearing on the fifteenth
9 if there are any objections.

00:49 10 But let's go down the road a bit and let's assume that
11 it gets entered and money is withheld in order to reimburse
12 you and you've stated that if there's leftover money, it goes
13 back in the fund to reimburse the plaintiffs. Who makes the
14 decision as to whether this money that's going to be leftover,
00:49 15 how does that get resolved? I mean you're going to have,
16 obviously there's receipts for all kinds of things that you
17 gave as out-of-pocket cost receipts, and do you have a CPA who
18 is going to reconcile these counts so we know and a report can
19 be made to the court that a review was done, we found, we've
00:49 20 confirmed expense in this amount and so forth?

21 MR. COFFIN: Yes, Your Honor. Very good question.
22 First and foremost at the, I think it's the last paragraph of
23 the Proposed Order that we've submitted, Your Honor, we
24 mentioned that we will come back to the court and ask for the
00:50 25 court to appoint what would be a, basically a fee and cost

1 committee on the plaintiffs' side who will go through that
2 exercise of looking at the time, looking at the expenses and
3 determining how much money is needed to cover all of the fees
4 and expenses. To your direct point about a CPA, yes, we had a
5 CPA involved in this case from the start and we can have an
6 audit done on all expenses at the very end.

7 My proposal is that once we are in a position to
8 present to Your Honor a motion to appoint the Common Benefit
9 Fee Committee, the cost committee, that we layout for you and
10 discuss the parameters of what we'll have the court approve
11 with regard to both fees and costs.

12 THE COURT: Now under the Master Settlement Agreement
13 there are timed payments being made by the defendants to fund
14 this thing. Where does the money -- who's going to hold the
15 money for the costs for the common benefit? Who holds that?

16 MR. COFFIN: There's a qualified settlement fund
17 that, into which all of the funds are submitted.

18 THE COURT: So they're all going to be one lump sum
19 and you're just going to take it out of that. There's not
20 going to be a separate fund set up for the costs, common
21 benefit costs.

22 MR. COFFIN: No, there will not, no.

23 THE COURT: Okay.

24 MR. COFFIN: At least not to my knowledge, Your
25 Honor. Provideo has also -- Mr. Marcino who's speaking, not

1 only did he do the redeem resolution, but they handled the
2 qualified settlement fund as well. Mr. Marvin, do you have
3 any comments on how that money is handled?

00:51 4 MR. MARVIN: No, there will be the one fund in the
5 qualified settlement fund and then the qualified settlement
6 fund administrator will establish sub-accounts for those
7 matters such as withholding costs.

00:52 8 THE COURT: All right, thank you. I know there's a
9 lot of attorneys here from the Steering Committee and this is,
10 I understand you've just learned of this yesterday. But does
11 anybody want to make any comments on this application
12 regarding the Common Benefit Fund? You don't have to. I mean
13 I'm going to set a time frame as I just did, August eleventh
14 and a hearing on the fifteenth if there's any objections. But
00:52 15 if anybody is here now and they want to be heard on that, I'm
16 happy to hear from them.

17 (No Response)

18 THE COURT: No takers. Okay. Fine.

00:52 19 MR. COFFIN: Okay. Anything further on the common
20 benefit motion?

21 THE COURT: No, not me. Judge Schneider?

22 MAGISTRATE JUDGE SCHNEIDER: No.

23 THE COURT: All right.

00:52 24 MR. COFFIN: Your Honor, from both parties' side,
25 that concludes what we wanted to present to the court today.

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1 But to reiterate what my colleagues have said, it's truly been
2 a pleasure to practice in this court. We thank you, Judge
3 Kugler and Judge Schneider for moving this case along. We
4 thank your staff, Larry, Carl. Thank you for all the work
5 you've done. Loretta for being so accommodating to us,
6 especially when we were bothering you on multiple occasions to
7 set up meetings with the court. Thank you very much. We've
8 appreciated it. My colleagues on the plaintiffs' side, it's
9 been a joy working with all of you. My co-lead, Mr. Slater.
10 It's really, really been a great process for us to go through
11 and again on defense side, strong advocates, zealous advocates
12 for their clients and it's been a great process to engage. So
13 thank you all very much. We appreciate it.

14 THE COURT: Judge Schneider, any final remarks?

15 MAGISTRATE JUDGE SCHNEIDER: I said it before when we
16 were in conference, but I'll say it again. From my
17 perspective it was a pleasure dealing with these lawyers. The
18 Steering Committee, rest assured your leadership zealously
19 represented your interests throughout the case. Both sides I
20 think exhibited the highest standards of professionalism and
21 excellence and from my perspective it was a pleasure working
22 on this case.

23 I don't want to say I'm sorry to see you go, but it,
24 truly it was a pleasure and it's one of the highlights of my
25 ten years on the bench to work on this case with this caliber

1 of lawyers. We had some rough spots, but at all times
2 everyone exhibited the utmost professionalism which was
3 appreciated. Miss Sharko, I thought instead of static, I
4 thought you were going to say macro.

00:54 5 But with that, I'll turn it over to you, Judge. And I
6 also have to say that he's, he's very, very modest. He
7 doesn't like to take credit, but the captain of this whole
8 ship was Judge Kugler. We spent a lot of time together, but
9 Judge Kugler steered this whole ship and he deserves the
00:55 10 credit for whatever efforts this court made, and behind the
11 scenes he had great people. My law clerk Eddie did a
12 fantastic job. Sara who just delivered her third baby girl.
13 Karen who's sitting in. Dave our intern, a whole lot of
14 people behind the scenes, downstairs in the Clerk's Office who
00:55 15 teamed in on this effort. But let's face it, the captain of
16 the ship is Judge Kugler, even though knowing Judge Kugler, he
17 won't take credit for what he really deserves all the credit
18 for whatever efforts the court did.

00:56 19 THE COURT: Well, thank you for that, Judge
20 Schneider. But it was your Herculean efforts that really put
21 this thing to rest and I want to publicly thank you. I
22 privately thank you and I want to publicly thank you. And
23 you're right about our staff. This is a great courthouse. We
24 have wonderful people working here. We spend some time and
00:56 25 some effort picking our law clerks because we're looking for

00:56 1 people who like to work and like to deal with the public. We
2 are here to serve the public. We try not to ever forget that.
3 That's our whole reason for being is to serve the public. And
4 I trust based on the results of this case, that we have done
5 that for all of you. But the real heros in this case, the
6 heros are you, the lawyers. I've said this a number of
7 occasions privately and now I want to take the opportunity to
8 say it publically.

00:56 9 When I first got this case and it's kind of a strange
10 way it came to me and I don't need to get into that, but I
11 didn't know what to expect from the lawyers. I may know what
12 to expect from the case. I mean it was going to be a lot of
13 work for a lot of people. But it didn't take long for me,
14 dealing with you, to come to understand that you are terrific
00:57 15 lawyers, each and every one of you. And it made it such a
16 pleasure for me to watch you work. And there were times when
17 you didn't get along and you were zealous advocates for your
18 positions which I appreciate. I mean that's what you do and
19 that's what you do very well. But you are the cream of the
00:57 20 crop and we were blessed, Judge Schneider and I, to have you
21 as lawyers in this courtroom and in this courthouse to get
22 this case done. You deserve all the credit for this
23 settlement. You deserve all the credit for the outcome of
24 this settlement, and I just want to thank each and every one
00:57 25 of you for all you've done to make sure that all these

1 thousands of people involved in this process have gotten some
2 share of the justice that everyone deserves.

3 So thank you, and enjoy the rest of your summer. And I
4 guess, I guess we will see you maybe once or twice in the
5 future just to tie up some loose ends in this case and I'll
6 look forward to that. And with any luck, maybe I'll see some
7 of you again in the future in the court house. Thanks,
8 everybody. Have a good one.

9 MR. COFFIN: Thank you, Your Honor.

10 MS. SHARKO: Thank you, Your Honor.

11 MR. SLATER: Thank you, Your Honor.

12 (The matter was then concluded)

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